IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4555 OF 2024

PETITIONER : **Shaureen Shamik Ambatkar**, aged about 18 years old, Occupation : Student, Resident of Plot No.18-A, Anjaneya Santaji Colony, behind Datta Mandir, Deonagar, Nagpur.

..VERSUS..

RESPONDENTS :

1 **Union of India** through its Secretary, Department of Higher Education, Ministry of Education, having its office at 127-C, Shastri Bhawan, New Delhi and

1-A) through its Secretary, Department of Health and Family Welfare in Ministry of Health and Family Welfare having its office at Nirman Bhawan, New Delhi

2 **National Testing Agency**, through its Director General and Member Secretary having its office at First Floor, NSIC-MDPB Building, Okhla Industrial Estate, New Delhi.

3 **National Medical Commission** through its Secretary, having its office at Pocket-14, Sector-8, Dwarka Phase-1, New Delhi.

4 **Directorate General of Health Sciences** through its Director General, having its office at Nirman

Bhawan, New Delhi.

5 **State of Maharashtra** through its Secretary, Medical Education and Drugs Department, having its office at Mantralaya, Madam Cama Road, Mumbai.

6 **State Common Entrance Test Cell**, State of Maharashtra through its Commissioner, Maharashtra State and Competent Authority at 8th Floor, New Excelsior Building, A. K Nayak Marg, Fort, Mumbai.

7 **Directorate of Medical Education and Research** through its Director at Govt. Dental College & Hospital Building, St. George's Hospital Compound, Mumbai.

Mr Akshay Naik, Senior Advocate a/b Mr Rohan Deo, Advocate for Petitioner.
Mr Rupesh Kumar, Senior Advocate with Mr P. S. Chawhan, Advocate for Respondent No.2.
Mr S. A. Chaudhari, Advocate for Respondent Nos.1 and 4.
Mr R. M. Bhangde, Advocate for Respondent No.3.
Mr A. S. Fulzele, Addl. G. P. for Respondent/State.
Mr N. A. Gaikwad, Advocate for Respondent No.6.

CORAM : AVINASH G. GHAROTE AND M. W. CHANDWANI, JJ.

RESERVED ON : 12th AUGUST, 2024.

PRONOUNCED ON : 14th AUGUST, 2024.

JUDGMENT (PER : AVINASH G. GHAROTE)

1. Heard Mr Akshay Naik, learned Senior counsel alongwith Mr Rohan Deo, learned counsel for the

petitioner, Mr Rupesh Kumar, learned Senior counsel alongwith Mr P. S. Chawhan, learned counsel for respondent No.2, Mr S. A. Chaudhari, learned counsel for respondent Nos.1 and 4, Mr R. M. Bhangde, learned counsel for respondent No.3, Mr A. S. Fulzele, learned Additional Government Pleader for respondent/State and Mr N. A. Gaikwad, learned counsel for respondent No.6.

2. On 5th August, 2024, the following position was recorded, while issuing notice :

> "*Heard Mr. Naik, learned Sr. Advocate instructed by Mr.Rohan Deo, Advocate for the petitioner.*
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> *2. The petition raises two questions in light of what has been observed by the Hon'ble Apex Court in* ***Vanshikha Yadav v. Union of India and Others (Writ Petition (Civil) No.335 of 2024)****, decided on 23/07/2024, in which the petitioner claims to be covered by what has been held in para-19, in view of which, the marks which were awarded to the petitioner for attempting the question have been deleted. Learned Sr. Advocate relies upon the observations in para-21, which grants liberty to the petitioner to approach this Court, in case there are any other discrepancies apart from what has been considered in* ***Vanshika Yadav*** *(supra).*
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> *3. The learned Sr.Advocate for the petitioner submits that question No.11 in the Physics paper, which related to radioactive decay was out of syllabus, on account of which in view of the information brochure regarding NEET 2024 Chapter 3, 3.2(a)(vi), he contends, that the petitioner would be entitled to full marks. To demonstrate that question No.11 regarding radioactive decay was out of*

syllabus, the learned Sr. Advocate invites our attention to the syllabus for NEET-2022, in which for the paper of Physics, Unit VIII (Page-121), the subject radioactivity has been included, which includes radioactive decay, so also to the syllabus for NEET-2023 in which also in Unit VIII, the same subject is included (Page-135). However, the same is absent in the syllabus for NEET-2024, for which he invites our attention to Page-54 Unit 18, which does not have the subject of radioactivity. It is therefore contended that in view of what has been stated in Chapter 3, clause 3.2(a) (vi) (Page-44), since the question is out of syllabus, the petitioner would be entitled to 4 marks, irrespective of whether the petitioner has attempted the same or not.

4. In relation to the question No.148, for the subject Botany, it is submitted that the question itself is wrong for the reason that Gross Primary Productivity is at the first trophic level and not at the tertiary trophic level and on account of the fact that the petitioner has attempted it, the case of the petitioner would be covered by Chapter 3, 3.2(b)(vi) (Page-44), on account of which, since the petitioner has attempted the question, the petitioner would be entitled to 4 marks. The fact that the petitioner has attempted the question, according to him, is demonstrated by page 210 read with page 213.

5. Both these questions would require the assistance of an expert in the field, in view of which, we do hereby constitute a Committee comprising of (1) Head of the Department, Botany, Institute of Science, Nagpur (2) the professor of Botany, St.Francis De Sales College (SFS), Seminary Hills, Nagpur and (3) Professor of Botany, Shivaji Science College, Nagpur to go into the matter and submit their opinion to this Court by 08/08/2024.

6. We also constitute a Committee comprising of (1) Head of the Department, Physics, Institute of Science, Nagpur (2) Head of the Department, Physics, VNIT,

Nagpur and (3) Head of the Department, Physics, Laxminarayan Institute of Technology, Nagpur, to go into the aforesaid questions and submit their opinion to this Court by 08/08/2024."

3. On 09th August, 2024, the following position was recorded :

"In pursuance to the order dated 5.08.2024, the committee constituted in respect of question no.11 in the Physics paper of NEET-2024 has rendered an opinion, which is taken on record and marked as "X" for the purpose of identification, which opinion is dated 07.08.2024, which opines that the subject of Radioactivity is included in nuclear fission and fusion and, therefore, is the subject which is included therein. In view of this opinion, it has to be held that the question no.11 was within the syllabus. The contention in that regard is, therefore, rejected.

2. In view of the above opinion rendered in respect of question no.11 of the Physics section, we do not see any reason to entertain the petition in respect of question no.11. The same is, therefore, dismissed, vis-a-vis challenge to question no.11 of the Physics paper.

3. In respect of the second contention, that question no. 148 for the subject of Botany was wrong an opinion has been rendered by the committee constituted by the order dated 5.08.2024, which is taken on record and marked as "Y" for the purpose of identification, which states that question no. 148 for Botany subject is correct.

4. In so far as question no. 148 of subject Botany is concerned, Mr. Naik, learned Senior Counsel, upon perusal of this opinion submits, that the text book of NCERT, does not contain that question. Mr. Naik, learned Senior Counsel for the petitioner in this context invites

our attention to the question No. 148 (page 105) and Chapter No. 12 Ecosystem in the Biology Text book for class 12 published by the NCERT, to contend, that there cannot be any primary productivity at the tertiary stage, for which he relies upon topics at 12.2, 12.4 and so also Trueman's Elementary Biology Vol. II, Chapter 14 (page 182) which delineates what is primary productivity and secondary productivity and difference between the same as well as difference between net primary productivity and gross primary productivity.

5. Mr. Kumar, learned Senior Counsel for respondent No.2 submits, that there is no prescribed text book for the various subjects and the syllabus is prescribed by the National Medical Commission (NMC). He, therefore, submits, that merely because a text book makes a reference to some topics that cannot be used to contend that the question is incorrect.

6. The respondent No.2, therefore, to file an affidavit stating that there is no prescribed text book by the NTA for the purpose of the syllabus prescribed by the NMC, from which the students are expected to study."

4. An affidavit, thereafter, has been tendered across the bar in pursuance to the order dated 09.08.2024, which is sworn by the Director of National Testing Agency (NTA), which states as under :

*"**9.** I submit that all the candidates who appeared in NEET (UG) – 2024 were very well aware of the Syllabus that is prescribed by National medical Commission (and not by NTA). As per the Scheme of NEET (UG) - 2024 Examination, the Syllabus notified by NTA in the Information Bulletin for 2024 is as prescribed and approved by the National Medical Commission (NMC), which is the Competent Authority under Section 14 of the NMC Act, 2019. Neither the Ministry of*

Education nor NCERT has any role in prescribing the Syllabus for NEET (UG) 2024. True copy of the Public Notice dated 06.10.2023 of the National Medical Commission, vide which the NEET (UG) – 2024 Syllabus as published by the Commission in its official website for the information of all concerned, is enclosed herewith as ***Annexure R-2/1.***

10. I say that what is prescribed for the candidates of NEET – UG is the Syllabus and not any particular Text Book. The Syllabus is common for all candidates across the Country, while the Books referred by the candidates may vary from candidate to candidate of different Boards and different States. Thus, NEET (UG) is not solely NCERT Test Book oriented competitive examination. NCERT is not the only Guide Book for students appearing in NEET-UG, which is a pan India Exam where students from various State Boards, CBSE, ICSE etc. appear. Different text books are followed by different Boards in different states.

11. I further say that NTA, being the Examination Conducting Body/Testing Agency, does not prescribe either syllabus or any text book on its own for the candidates of any exam conducted by it [including for NEET (UG)]. As mentioned earlier, only the syllabus (and not any text-book) has been prescribed by NMC. The NTA for the purpose of taking the NEET-UG Exam as per the syllabus prescribed by the NMC.

12. Therefore, I state that there is no prescribed text book by the NTA for the purpose of syllabus prescribed by the NMC, from whch the students are expected to study.

13. I thus, submit that the Final Answer Key of Q. No.148, i.e. option/response 1 in T5 Test Booklet Series which was attempted by the petitioner (option 3 in the master set of question paper), which has not only been settled by the Subject Experts of NTA but also held to be correct option by the Committee of the Subject Experts constituted by this Hon'ble Court, should be accepted by this Hon'ble Court."

5. Mr Akshay Naik, learned Senior counsel for the petitioner submits, that neither of the above position, addresses the question posed that there cannot be any primary productivity at the tertiary stage. He therefore submits, that the issue will have to be determined in light of what has been stated in the text book for Biology for Class 12th published by the NCERT (Page 146) and what has been stated there in Chapter 12 regarding the ecosystem and its productivity based upon the energy flow and so also Trueman's Elementary Biology Vol.II for Class 12 (Page 170) and specifically Chapter 14 on the ecosystem, which also contains the differences between net primary productivity and gross primary productivity as well as between primary and secondary productivity, for the purpose to determine whether there can be any primary productivity at the tertiary stage.

6. Mr Rupesh Kumar, learned Senior counsel instructed by Mr P. S. Chawhan, learned counsel for respondent No.2 submits, that this cannot be the domain of this Court, as the questions are formulated and framed by domain experts in the respective fields and this Court under Article 226, cannot go into such issues and will have to rely upon the opinions of the experts in this regard. He therefore submits, that at this stage, when there are two opinions one by the respondent No.2 and one by the Committee

constituted by this Court, which points out to correctness of the question No.148 for the subject of Botany, the matter should rest there and the petition needs to be dismissed.

7. It need not be reiterated, that this Court is not an expert on the subject of Botany and therefore, to ascertain the veracity of the claim made in respect of question No.148 of the subject of Botany, had constituted a Committee, which had submitted a report at "Y". The Committee, in its report dated 07.08.2024, has categorically opined, that the question No.148 for the Botany section is correct. Not only that it has also been given an explanation of the answer. In view of this, it was necessary to the petitioner to have countered the same by placing some expert opinion on record, which took a different view of the subject by rendering an opinion, that there cannot be any primary productivity at the tertiary stage. However, that has not been done by the petitioner. We are therefore left, only with what has been stated in Chapter 12 of the NCERT Text Book for Class 12 (Page 146) and Trueman's Elementary Biology (Page 170), which are relied upon by the learned Senior counsel Mr Akshay Naik for the petitioner. However, it is equally necessary to note, that in view of the specific query put forth to the respondents in the order dated 09.08.2024 as to whether there was any prescribed text book by the NTA for the purpose of the syllabus prescribed by the

National Medical Commission (NMC), from which the students are expected to study, a categorical statement on oath has been made in Para 10 and Para 12 of the affidavit dated 10.08.2024, that the books referred by the candidates vary from candidate to candidate of different Boards and different States and there are no prescribed text books by the NTA for the purpose of syllabubs prescribed by the NMC, from which students are expected to study, in view of which, it is not possible for us, to assimilate and correlate all the text books, on the subject of Botany, so as to find out as to whether there can be any primary productivity at the tertiary stage, as we are not domain experts. The exercise of appointing domain experts has already been carried out in pursuance to the order dated 05.08.2024 and the reply is already on record.

8. It is equally necessary to note that if the petitioner felt the question was wrong, he ought not to have attempted it. The fact, however, remains that he attempted the question and has given an incorrect answer, which in itself would indicate that at the time when the petitioner had answered the question paper, he did not feel that the question was wrong, and therefore proceeded to answer it.

9. Considering that, the process of counseling is likely to begin from 14.08.2024 or a near by date, it is not also possible for us, to appoint another Committee for answering the above issue. We also note, that the in-house Committee constituted by the respondent No.2 has also given an opinion on 01.06.2024 (Page 278), which is also in-consonance with the opinion (Y) rendered by the Committee appointed by us and the judgment of the learned Single Judge of the Delhi High Court in W.P. (C) 8637/2024 dated 01.08.2024, in which a similar question was raised, by relying upon the aforesaid opinion dated 01.06.2024 by the subject experts appointed by the NTA (respondent 2), which petition stands dismissed.

10. It is a settled position of law, that the Court cannot sit in judgment over the decision of subject experts and as to rely upon the opinions rendered and placed before it, unless material is placed on record, for the Court to arrive at a finding that the opinion ought not to be relied upon or is not upon the question referred, as in view of what has been stated in Para 4 of the order dated 05.08.2024, the Committee has rendered its opinion and nothing has been placed on record to counter the same, except of the two text books, in respect of which we have already indicated the position above.

11. We therefore do not feel it an appropriate case to appoint another Committee to go into the question again as according to us, that would be an exercise in futility, in view of the opinions dated 01.06.2024 and 07.08.2024 already on record. We are therefore not inclined to entertain the petition any further. The petition is, therefore, **dismissed**.

(M. W. CHANDWANI, J.) (AVINASH G. GHAROTE, J.

TAMBE.

Signed by: Mr. Ashish Tambe
Designation: PA To Honourable Judge
Date: 14/08/2024 15:28:03